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CHRONICLE

ACLU: Shy on intelligence?

If, as seems likely, major news organizations decide to test the recently approved Intelligence Identities Protection Act in the courts, they will be doing so without assistance from the one group that would perhaps be most expected to lend support — the American Civil Liberties Union.

Although the group is reluctant to discuss the matter publicly, one top official says that the ACLU has decided not to challenge the legislation, despite its repeated claims that the act violates the First Amendment. The decision, says the official, was reached out of a conviction that the present Supreme Court would uphold the bill.

The ACLU's skittishness comes after its little-publicized, unhappy role in the bargaining over the language of the legislation, which makes it a crime for journalists and others to disclose the names of intelligence agents when there is "reason to believe" that the disclosure would impair intelligence operations abroad. First Amendment advocates had pushed for an "intent" standard, which, proponents believe, would have limited application to such publications as *Covert Action Information Bulletin* that purposely seek to frustrate intelligence activities.

"We knew that we could not stop Congress from passing the bill," says Morton Halperin, who works for the ACLU, "so we decided from the beginning that we could concentrate on making it as narrow in scope as possible." On July 13, 1981, Halperin and ACLU legislative counsel Jerry Berman struck a deal with CIA lawyers. The ACLU pledged it would not seek to delay congres-

sional consideration of the bill. In return, the CIA agreed to support the specific "intent" language preferred by the ACLU.

But someone from the CIA telephoned Representative John Ashbrook, a Republican from Ohio, with word of the deal. Ashbrook (who has since died) stood up on the House floor and, referring to the agreed-upon language, said, "I will lay it out flat. The language that I object to is American Civil Liberties Union language. . . . We have the ACLU internal documents. There is no doubt in my mind, I will say it factually, it is not our language, it is theirs."

Ashbrook then proposed "our language" — the far more encompassing "reason to believe" standard. To the shock and chagrin of the bill's opponents, Ashbrook's amendment passed 226 to 181. Subsequently, despite a successful attempt by the ACLU to downplay its involvement, the Senate adopted an identical amendment.

"The ACLU had tried to strike a deal and it backfired in their face," a former aide to Ashbrook recalls. "If the ACLU had never gotten involved, John would never have proposed his amendment. The ACLU just really pissed him off." One staff member of the House Intelligence committee describes Ashbrook's speech as "pure and simple ACLU-demagoguery," but adds that it was effective in garnering votes.

Halperin concedes that the ACLU's deal with the CIA had a detrimental effect on the House vote once it was publicized, but says that, even then, the ACLU had been caught unawares by the House action. "No one had anticipated we were going to lose that vote," he says. "We had failed to make sure we had the votes in the first place."

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